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Mr Justice Clifford

Mar.

SUPREME COURT OF THE UNITED STATES.

No. ~~100~~. 119.

THE UNITED STATES, APPELLANTS,

vs.

JOHN WILSON.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

G. S. GIDEON, Printer, 511 Ninth street, Washington, D. C.

Mr Justice Nelson

Opinion Read

15-01

SUPREME COURT OF THE UNITED STATES.

No. 199.

THE UNITED STATES, APP'TS,

vs.

JOHN WILSON.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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GIDEON, Print.

1503

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this seventeenth day of February, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of John Wilson, for the place named "Huerta de Romualdo," was presented, and ordered to be filed and docketed with No. 50, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *May* 10*th*, 1852.

In case No. 50, John Wilson, for the place named "Huerta de Romualdo," the deposition of Pablo de la Guerra, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *January* 4*th*, 1853.

In the same case, the deposition of John Young, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 9 of this Transcript.)

SAN FRANCISCO, *August* 3*d*, 1853.

Case No. 50, on motion of the United States law agent, was placed on the trial docket.

SAN FRANCISCO, *August* 4*th*, 1853.

Case No. 50 called, evidence read, case submitted on briefs, and taken under advisement by the board.

SAN FRANCISCO, *December* 12*th*, 1854.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board rejecting the claim.

(Vide page 38 of this Transcript.)

And the following order was made, to wit:

(Vide page 55 of this Transcript.)

Petition.

To the Honorable Commissioners to settle private land claims in California:

The petitioner, John Wilson, respectfully shows—

That in the year 1842, the alcalde of San Luis Obispo, acting under the direction and authority of Juan B. Alvarado, governor of California, gave to Romualdo a small tract of land, situate in the county of San Luis Obispo, called Huerta de Romualdo, or del Chorro, containing some 1,500 or 1,600 varas square, within the boundaries established by the aforesaid alcalde.

That on the 27th day of June, A. D. 1846, the said Romualdo sold and conveyed to the petitioner the aforesaid tract of land; and that on the 28th day of June, A. D. 1846, the tract of land was surveyed, and the judicial possession of it given to the petitioner by the proper authority.

That on the 10th day of July, A. D. 1846, Pio Pico, governor of California, by virtue of authority in him vested, gave a new and formal grant of the said tract of land to the said Romualdo; and that on the 11th day of July, A. D. 1846, the said Romualdo confirmed by a new deed his former conveyance to the petitioner, who on the same day was again put into the judicial possession by a new act of court, the sale and conveyance aforesaid being made by judicial authority and with the approbation of the governor; copies of the certificate of the governor and alcalde, proving the grant of Governor Alvarado in 1842, of the first conveyance and act of juridical possession, of the grant of Governor Pico in 1846, of the second conveyance and act of judicial possession, and of the approval of the governor, and also of the map of the aforesaid tract of land, are hereto annexed, marked A, with translations, marked B.

And the petitioner further shows, that he knows of no interfering claim; that the said land has not been surveyed by the surveyor general of the United States, but that it was surveyed by the proper authority at the time of giving the judicial possession of it, and has been since by the county surveyor of San Luis Obispo county, and that its boundaries are definite, well known, and undisputed; that from the year 1842, to the 27th day of June, A. D. 1846, the said Romualdo was in quiet, peaceful, and full possession of the said tract of land, and that since that time the petitioner has been and now is in the full and undisputed possession and occupation of the land aforesaid.

The petitioner relies for confirmation of title upon the original papers, copies of which are hereto annexed; upon the documents and minutes relating thereto in the archives, now in the possession of the surveyor general, and upon such other and further proofs as he may be advised are necessary.

Wherefore he prays the commissioners to confirm to him the grant of the said tract of land.

By his Attorneys:

HALLECK, PEACHY & BILLINGS.

Filed in office February 17th, 1852.

(Signed) GEO. FISHER, *S'y*.

Deposition of Pablo de la Guerra.

OFFICE OF THE BOARD OF LAND COMMISSIONERS IN CALIFORNIA,
SAN FRANCISCO, *May* 10*th*, 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Pablo de la Guerra, a witness produced on behalf of the claimant, John Wilson, whose petition is No. 50 on the docket of said commissioners, and after being duly sworn, testified as follows; the law agent of the U. S. was duly notified, and attended:

1st question. What is your name, age, and place of residence?

Answer. My name is Pablo de la Guerra; my age is 32 years; I reside in Santa Barbara, and have resided in California all my life.

.d question. Are you acquainted with the signatures of Juan B. Alvarado, J. Mariano Bonilla, Jose Garcia, Juan Wilson, Pio Pico, Jose Matias Moreno, and Ynocente Garcia? And if so, say whether their signatures to the papers before you are genuine, whether the papers marked Exhibit "A," in claim No. 50, filed in the office of the secretary of the commissioners, are correct copies of these originals.

Answer. I do not know the signatures of Jose Garcia, but I am acquainted with the signatures of Juan B. Alvarado, J. Mariano Bonilla, Juan Wilson, Jose Matias Moreno, and Ynocente Garcia; their signatures to the documents before me are genuine, and to the best of my knowledge and belief the documents themselves are genuine and original. I have compared them with Exhibit "A," filed in claim No. 50, filed in the office of the secretary of the commissioners, and find the latter to be correct copies of these originals.

3d question. What was the usage and custom of the country with respect to sales of lands by Indians which had been granted to them by the governor, was there any distinction in this respect between Indians and whites?

Answer. I know of no distinctions; I have always understood that Indians had the same rights of property under the Mexican laws as whitemen; I have frequently known Indians to sell lands which had been granted to them, and such sales were always considered legal under the Mexican government.

Questions by U. S. Law Agent.

Quest. 1. What action have you ever known to be taken by the Mexican government which would show that said government considered sale in California by Indians legal?

Ans. I know of no action by the government or public authorities either approving or disapproving such sales.

Quest. 2. Have you ever known any action taken either by the public authorities in California, or by people living in California, which would show that such sales by Indians were considered legal?

Ans. I know of no action taken either by the public authorities nor by the people in regard to this matter. I know of an instance when the governor of Calfornia recognized the right of an Indian to sell lands. I refer to the letter which is among the papers in this case, dated San Luis Obispo, July 11th, 1846. I have frequently known of sales made by Indians to white people, and considered by them as valid.

3d question. How many such instances have you known?

Answer. I now remember distinctly, four such instances.

Question by Claimant's Counsel.

Quest. 1. Whether or not, sales by Indians of lands granted to them by the government, were as freely and generally in California as such sales were made by the whites, in proportion to the relative number of the two kinds of grants.

Ans. They were made as freely and as generally.

(Signed) PABLO DE LA GUERRA.

The law agent present.

Sworn and subscribed before me, this 10th of May, 1852.

(Signed) HARRY J. THORNTON, *Com'r.*

Filed in office May 10th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of John Young.

SAN FRANCISCO, *Jan'y 4th*, 1853.

On this day, before Com'r Harry J. Thornton, came John Young, a witness in behalf of the claimant, John Wilson, petition No. 50, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

My name is John Young; my age is 28 years; I reside in Santa Clara county, and have lived in California 9 years. I know the tract of land called "Huerta de Romualdo o del Chorro;" it is in the county of San Luis Obispo. John Wilson has occupied it since the early part of 1846; he has had horses and cattle on it,

and has had a garden on it; he occupies it at the present time, and has a house on it.

(Signed) JOHN YOUNG.

U. S. law agent present.

Sworn to and subscribed before me, this 4th January, 1853.

(Signed) HARRY J. THORNTON, *Com'r.*

Filed in office January 4th, 1853.

(Signed) GEO. FISHER, *Sec'y.*

"A."

Espediente de Dn. Juan Wilson del parage conocido con el nombre del "Chorro o Huerta" de Romualdo q'e se haya al N. O. de este pueblo en distancia de una y media legus. Ano de 1846.

Juan B. Alvarado, Coronel de la Milicia Auselias del Departamento de Californias.

Certifico que siendo gobernador de este departamento en el ano de 1842, mande orden en dicho tiempo al encargado de la mision de Sn. Luis Obispo, entonces Dn. Mariano Bonilla, para que de los terrenos valdios pertenecientes a dicha mision, repartiere proporcion almente a algunas de los indigenos del epresa de establecimiento conforme a los meritos y capacidad de cadano, las suertes de tierra que creyere conveniente poniendo los inmediatamt'e en posecion de ellos.

En consecuencia de esta disposicion por su cumplimiento atrio dicho empleado de haberlo verificado resultando agraciado el yndigena Romualdo con el parage llamado el Chorro con la estencion que el dicho S'or Bonilla, le demarca en cuya posecion se ha mantenido hasta la fecha quieta y pacificamente. Y a pidium'to del interesado para los fines que le convengan, le doy el presente en Monterey, a dos de Mayo, de mil ochocientos cuarenta y seis.

JUAN B. ALVARADO.

El q'e suscribe certifico q'e en el reparta que hize de suertes de tierra en el estabiliam'to de Sn. Luis Obispo, pr. orden del gobierno en el ano de 1842, a los yndigenas del mismo establicimiento a Romualdo le senale pr. propiedad sulla lo suerte q'e ocupava con el nombre de su huerta en el arroyo del Chorro senalandole le pr. termino y lindero pr. la parte del establiem'to el vertiente de la agua q'e riega d'ha tierra, y pr. la parte opuesta, la rinconada: siendo la estencion de mil vs. poco mas o menos de longitud del S. E. a N.'a E. y trescientos de latitud de S. O. a N. E., culla huerta pr. testimonio de los demas indigenas, hace mucho tiempo q'e la ocupa el espresado Romualdo y pr. tal condicion se la senale como sulla habiendo ofrecido el recobrar del gobierno su respectivo titulo, y pa. que conste a pedim'to del interesado le doy el presente en S. Luis Obp'o a 20 de Junio, de 1846.

J. MAR'NO BONILLA.

En el pueblo de San Luis Obispo de la Alta California a los veinte y siete dios del mes de Junio, de mil ochocientos cuarenta y seis, ante mi Victor Linares, juez de paz, suplem'te de d'ho pueblo y su demarcacion y los testigos de asistencia con quienes actuo en fa forma establecida, pr. falta de escribano publico, fueron presentes el indigena Romualdo y Dn. Juan Wilson, cuyas personas doy fee conosco, y dijo el primero q'e pr. si y a nombre de sus herederos y susesores y de quien de ellos hubiere titulo voz y fama en cualequiara manera da en venta legal y enagenacion perpetua a Dn. Juan Wilson un terreno que le pertenece en propiedad en estencion de quinientas o seis cientas varas conocido con el nombre de Huerta de Romualdo, y se haya al N. O. de este pueblo entre las tierras de el y las de Dn. Juan Wilson, y aunque no presente titulo de adquisicion y propiedad pr. constar del testimonio de hombre de bien ses del referido indigena la enunciado huerta, declara que esta libre de todo gravamen publico perpe'ua, temporal, especial, general, tacito y espreso y como tal se lo vende pa. q'e lo dispute goze, cembre, enagene y disponga de el como de cosa suya adquirida con legitimo y justo titulo, dandose el otorgante pr. recibredo de la cantidad de ciento cincuenta pesos valor de d'ho terreno y sobre no pareces de presente la entrega renuncia las leyes de ella, las de su prueba, y pago de recibo como en ella se contiene y desde hoy en adelante se desapodera, desiste, quita y aparta del dominio y posecion senorio titulo recurso, o cualesquiera derecho que le compete al enunciado terreno, y lo renuncia pasa a Dn. Juan Wilson, para q'e disponga de el como de cosa propria, y le confiere podes irrevocable con libre fronca general administracion obligandose el otorgante a que esta venta le sera cierta, segura y efectiva, y nadie le inquietara ni movera pleito alguna sobre su propiedad y posecion ni contra el terreno aparecera grabamen alguna, y a la firmeza y validecion de todo lo repetido, obligo el atorgante sus bienes presentes y futuros y con ellos se somete al fuero y jurisdiccion de los senores jueces, q'e de sus causas deban conocer, como pr. sentencia definitiva consentida y pasada, en autoridad de cosa juzgada, y pr. tal le recibe. En cuyo testimonio asi lo otorgo y no firmo pr. no saberlo hacer y solamente pone una senal de cruz, siendo testigos instrumentales Dn. Jose Maria Carrasco, Dn. Nicolas Carpio, y Dn. Tomas Herrera, de q'e yo el referido juez doy fee.

ROMUALDO, †
VICTOR LINARES.

Jose Garcia, ass'a.
Jo. Mari'no Bonilla.

Se estendio el presente documento en papel comun pr. falta del sellado correspondt'e f'ha ut supra.

LINARES.

S'or Juez de Paz de S. Luis Obispo.

Juan Wilson vecino del partido de Santa Barbara, ante V. como mejor procede, paresco y dijo. Que en virtud de obtener en propiedad el terreno del Chorro como consta por la escritura de venta q'e debidamente acompano y tambien los documentos que a falta de titulo acrediter q'e esta concedido al Yndigena Romualdo (quien a mi une vendido) hace ya algunos anos: Solicito V. tenga a bien daune la posecion juridica citandone el dias y hara en q'e deba verificarse, de lo cual recibire gracia q'e Juno, &c.

San Luis Obispo, Junio 28, de 1846.

JUAN WILSON.

SAN LUIS OBISPO, *Junio* 28, *de* 1846.

De conformidad con lo pedido en la presente instancia pa. el 29 del coriente previa citacion de los colindantes se le dara al interesado la posecion juridica q'e solicita. Yo el juez de paz suplente de Sn. Luis Obispo, y su demarcacion asi lo decreto y firmo.

LINARES.

En San Luis Obispo a los veinte y nueve dias del mes de Junio del ano de mil ochocientos cuarenta y seis, siendo presente Dn. Juan Wilson se le hize saber el auto anterior y dijo lo oye, y es conforme, y lo asente pr. diligencia de q. doy fee, con los testigos de asistencia pr. falta de escribano publico.

VICTOR LINARES.

Ass'a: JOSE GARCIA.
Ass'a: ENRIQUE TOMSON.

En el mismo dia se paso esta por escrito a Dn. Fran'co Villa, como encargado del terreno del S'or Olibiet, q'e colinda con el parage conocido con nombre del Chorro, pa. que presencia las medidas q'e se ban a tomar, y lo asente pr. diligencia q'e firme con los de asistencia.

VICTOR LINARES.

Ass'a: JOSE GARCIA.
Ass'a: ENRIQUE TOMSON.

En el pueblo de San Luis Obispo a los nuebe y veinte dias del mes de Junio del ano de mil ochocientos cuarenta y seis, se presento Don Fran'co Villa, en cumplimiento a la citacion q'e se le hise el dia anterior, y lo asente pr. diligencia que rubrique.

(Rubric.)

En el mismo dia mes y ano, yo el juez de paz suplente de San Luis Obispo acompanado de los de mi asistencia y colindantes y a citados pa. samos al parage conocido con el nombre de Chorro o Huerta de Romualdo, que se halla como legua y media de distancia al N. O. del edificio principal de San Luis Obispo con objeto de pro-

ceder a las medidas del terreno, y lo asente pr. diligencia, q'e firme con los de mi asistencia.

VICTOR LINARES.

Ass'a: JOSE GARCIA.
Ass'a: ENRIQUE TOMSON.

En el parage conocido con el nombre del Chorro o Huerta de Romualdo, en el mismo dia mes, y ano, yo el juez de paz suplente de San Luis Obispo, y su demarcacion, y los de mi asistencia, siendo presente Dn. J. Wilson, hice medir un cordel con el objeto de a las medidas del terreno y al efecto se midio un cordel de veinte y cinco varas castellanas, y en sus estremos se atarian dos Estacas, y pa. su constancia lo puse pr. diligencia, que firme con los de ass'a.

VICTOR LINARES.

Ass'a: JOSE GARCIA.
Ass'a: ENRIQ'E TOMSON.

En el mismo parage, dia, mes, y ano, yo el juez de paz suplente de San Luis Obispo y su demarcacion, acompanado de los de asistencia pr. faltar un perito agrimensor, dispuse nombras de los concurrentes dos medidores cordeleros, y fueron nombrados Dn. Vicente Feliz, y Don Ynocente Garcia, los cuales aceptando el encargo, juraron pr. Dios d'ho S'or, y la Santa Cruz desempenarlo fielmente segun su saber y entender, y lo asente pr. diligencia q'e firme con los de asistencia.

VICTOR LINARES.

Ass'a: JOSE GARCIA.
Ass'a: ENRIQUE TOMSON.

En el mismo parage, dia, mes y ano a continuacion yo el juez de paz suplente de San Luis Obispo y su demarcacion, acompanado de los de asistencia y concurrentes y a citados siendo presente Dn. Juan Wilson, pasamos a un rincon q'e demuestra el diseno, y previa el reconocimiento de los instrumentales q'e eston en el espediente y q'e justifican haber sido de la propiedad de Romualdo el terreno indicado des pues de demarcado aguel punto con unos alisos en que Dn. Juan Wilson, Catro una Cruz, y estampo su marca se comenjo la medida tomando los medidores el cordel pr. sus estremos y estacas, midieron del N. O. a S. E. pr. toda la orilla del arroyo del Chorro, a llegar a un Aliso q'e sirve de lindero al S'or Olibret, en donde se midieron cuarenta y tres cordeles, y se demarco este punto con una Cruz, q'e formo Wilson en el mismo arbol y su marca que a presencia de los concurrentes tambien la estampo en el mismo lugar. De ahi se tiro el cordel pr. el rumbo, S. O. hasta llegar al pie del serva que llaman de Romualdo y resultaron diez y nueve cordeles siendo demarcado este punto pr. un encino grande, en donde el presitado Wilson estampo su marca y

fornio una Cruz, senal de lindero pr. aguel punto en advertencia que en la linea recta q'e hay de el Aliso citado en la primera medida hasta el menciondo encino, se encuentrar el nacimiento del Agua del Chorro, y un Aliso que tambien esta marcado como los demas. En seguida se continuo la medida pr. el rumbo N. hasta terminos con el lindero de otro terreno tambien perteneciente a Wilson, y se midieron cuarenta y cuatro cordeles. De alli se siguidiendo pr. el rumbo N. E. se termino con el punto donde se conmensaron las medidas, en cuya distancia se contaron cinco cordeles, con lo cual se concluyeron las medidas, y senalados los termineros y linderos bajo un angulo de ciento y onse cordeles q'e componen dos mil setecientas y cinco varas castellanas, y a fin de q'e Dn. Juan Wilson concluedo este acto manifestare ser el dueno y s'or del terreno lo tome pr. la mano, y en vaz clara le dijo en nombre de la nacion Mejicana doy a V. posecion juridica del terreno que tiene comprado y q'e ahora se le ha medido y le mande que hiciere alguna demostracion de haber adquirido el dominio util y directo y con esto la propiedad del terreno, y el como en demostracion manifestando ser el unico s'or y dueno, cabo la tierra, arranco yerbas, y tiro piedras, con lo q'e se concluyo el acto y lo firme con los de asistencia.

VICTOR LINARES.

Ass'a: JOSE GARCIA.
Ass'a: ENRIQUE TOMSON.

SAN LUIS OBISPO, *Junio* 29, *de* 1846.

Debuelbase estas diligencias originales al interesado pa. q'e haga de ellos el uso q'e le convenga como testimonio de acquisicion de propiedad y tomese razon en el libro respectivo.

LINARES.

SAN LUIS OBISPO, *Junio* 30, *de* 1846.

Atendido el acto anterior con esta misma f'ha se debolbio a Dn. Juan Wilson el espediente en 9 fojas utiles y lo asente pr. diligencia q'e rubrique.

(Rubric.)

Queda tomado razon en el libro respectivo en las fojas 17, 18, 19, y 20.

VICTOR LINARES.

Pio Pico, Gobernador Constitucional del Departamento de Californias.

[SELLO.]

Por cuanto el indigena Romualdo he hecho constar que hace bustante tiempo que legalmente posecion terreno para labor de quinientos varas en cual en este lugar, el que adquirio por buena con-

cesion y no teniendo documento que le acredite para en todo tiempo justificar su derecho usando de las facultades que me estan conferidas a nombre de la nacion Mejicana he venido en confirmar lo concesion de el referido terreno, declarandole la propiedad por las presentes letras bajo las condiciones siguientes:

1a. Podra cercarlos quinientos varas de terreno que de nueve se le adjudican sin perjudicar los caminos y servidumbres lo disfrutara libre y esclusivamente destinandole al uso o cultivo que mas le acomode.

2a. Solicitara del juez respectivo le de la posecion juridica en virtud de este despacho pr. el que se demarcaran los correspondientes linderos que seran senalados con las mojoneras necesarias.

En consecuencia mando q'e teniendose el presente titulo por firme y valedero se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en el pueblo de S'n Luis Obispo en este papel comun por falta del sellado a diez de Julio de mil ochocientos cuarenta y seis.

PIO PICO.

JOSE MATIAS MORENO, *S'rio Ynt'o.*

[*For map see original, between pages* 18 *and* 19.]

En San Luis Obispo a los once dias del mes de Julio del año de mil y ochocientos cuarenta y seis. Por ante mi Ynocente Garcia juez ausiliar de d'ho pueblo y su demarcacion y los testigos de asistencia con quienes actuo en la forma establecido fue presente el Indigena Romualdo a quien doy fee conozco y dijo que habiendo adguirido del gobierno departamental el titulo de la Huerta de su nombre en virtud de haberle enagenado en venta q'e hiso de el a Dn. Juan Wilson como consta pr. la escritura respectiva q'e presenta traspasa d'ho huerta al referido Dn. Juan Wilson p'a mas seguridad de la venta hecha y para que conste lo asente pr. diligencia q'e firme con los de asistencia no haciendolo el espresado Romualdo pr. no saverlo hacer.

YNOCENTE GARCIA.

Ass'a: JOSE GARCIA.
Ass'a: ENRIQUE TOMSON.

S'or Juez de Paz.

Juan Wilson vecino del partido de Santa Barbara ante V. como mejor proceda, parezco y digo; qe. en virtud de tener comprada al Yndigena Romualdo el terreno qe. demuestran el titulo y diseno qe. devidam'te acompano a mas de la escritura de venta y traspaso de d'ho titulo, hecho a mi pr. el referido Yndigena, solicito tenga V. a bien darme la posesion juridica del mencionado terreno sirviendose citerme el dia y hora en que deba ser. Por tanto A. V. su-

plico acceda a mi favor, gracia que espero, dispensando este papel comun pr. falta de sellado.

San Luis Obispo, Julio 11, de 1846.

JUAN WILSON.

SAN LUIS OBISPO, *Julio once, de* 1846.

De conformidad con lo pedido pa. el dia 12 del coviente se le dara el interesado la posecion juridica q'e solicita. Yo el juez de paz ausiliar de San Luis Obispo y su demarcacion asi lo decrete y firme.

GARCIA.

En San Luis Obispo a los once dias del mez de Julio, delano de mil ochocientos cuarenta y seis, siendo presente Dn. Juan Wilson, se le hizo saber el acto anterior y dijo lo Oge y es conforme, y lo asente pr. diligencia de que doy fee con dos testigos de asistencia pr. falta de escribano.

YNOCENTE GARCIA.

Ass'a: JOSE GARCIA,
Ass'a: ENRIQUE TOMSON.

En el parage conocido con el nombre de la Huerta de Romualdo; a los doce dias del mez de Julio, del ano de mil ochocientos cuarenta y seis, yo el juez de paz ausiliar de la demarcacion de San Luis Obispo acompanado de los de mi asistencia, hice medir un cordel con objeto de proceder a las medidas del terreno, y al efecto se midio un cordel de veinta y cinco varas castellanas y en sus estremos se ataron dos estacas, y pa. constancia lo puse pr. diligencia q'e firme con los de asistencia.

YNOCENTE GARCIA.

Ass'a: JOSE GARCIA,
Ass'a: ENRIQUE TOMSON.

En el mismo parage, dia, mes y ano, yo el juez de paz de San Luis Obispo y su demarcacion, acompanado de los de asistencia pr. faltar un perito agrimensor, dispuse nombrar de los concurrentes, dos medidores cordeleros, y fueron nombrados Dn. Vicente Feliz y Dn. Mercurial Garcia los cuales aceptando el encargo juraron pr. Dios d'ho S'or, y la Santa Cruz, desempenarlo fiel y verdaderamente segun su saver y entender y lo asente pr. diligencia qe. firme con los de asistencia.

YNOCENTE GARCIA.

Ass'a: JOSE GARCIA,
Ass'a: ENRIQUE TOMSON.

A continuacion en el mismo parage dia mez y ano yo el juez de paz de San Luis Obispo y su demarcacion acompanado de los de asistencia y concurrentes ya citados, presente Dn. Juan Wilson, pasamos a un rincon qe. se encuentra demarcado en el diseno qe.

pertenecia al Yndigena Romualdo, y qe. ahora es de la propiedad de Dn. Juan Wilson, cuyo, queda demarcado comun alisal qe. sirve de lindero a otro terreno tambien propiedad del referido Wilson, pa. comensar las medidas y al efecto los nombrados medidores cordeleros tiraron el cordel siguiendo en direccion al S. E. pr. toda la orilla del arroyo, qe. llaman del Chorro, se midieron hasta llegar a un aliso que queda marcado con una Cruz labrada con hacha en el mismo arbol, cuarenta y bres cordeles, y continuando las medidas desde dicho punto al rumbo S. O. a llegar al pie del serro que llaman de Romualdo, se midieron diez y nueve cordeles, quedando demarcado este punto, pr. un encino qe. servira de lindero hiso una Cruz, y de alli antes de seguir las medidas pr. otro rumbo, volvimos atras pr. la misma linea y llegamos a un aliso endonde esta el nacimiento del aguage del Chorro, y alli mande a Dn. Juan Wilson que hiciere otra Cruz que demostrara ser aquel lindero con las tierras del Yndio Pedro Maria, y la hiso, en seguido volvimos de nuevo al encino y tiraron el cordel los medidores en linea recta pr. el rumbo V. hasta llegar a una piedra qe. esta endonde siempre ha habitado Romualdo, y se midieron treinta cordeles; se continuo midiendo pr. el rumbo V. O. hasta llegar a un rincon que tiene varios alisos que sirve de lindero al rancho de los Osos, y se midieron catorce cordeles; de alli se midio pr. el rumbo N. E. hasta llegar al punto donde se comenso la medida, y se contaron cinco cordeles, con lo cual fueron concluidas las medidas y senalados los terminos y linderos del terreno, y a fin de q'e Dn. Juan Wilson concluido este acto, manifestase ser el s'or y dueno absoluto del terreno, lo tome de la mano y en voz clara le dije en nombre de la nacion Mejicana doy a V. posesion juridica del terreno que tiene comprado y que ahora se le ha medido, y le mande que hiciese alguna demostracion de senorio y de haber adquerido el dominio util y directo, y el como demostracion de haber adquirido la propiedad del mencionada terreno manifestando ser el unico s'or, y dueno cabi la tierra, arronco yerbas, ytero piedras con lo qe. se concluyo el acto qe. firme con los de asistencia, de que doy fee.

YNOCENTE GARCIA.

Ass'a: JOSE GARCIA,
Ass'a: ENRIQUE TOMSON.

SAN LUIS OBISPO, *Julio* 12, *de* 1846.

Debuebanse estas diligencias originales al interesado p'a q'e haga el uso q'e le convenga como testimonio de adquisicion de propiedad y tomese razon en el libre correspondiente.

GARCIA.

SAN LUIS OBISPO, *Julio* 13, *de* 1846.

Atendido el acto antecedente con esta misma f'ha se debolbio a

D'n Juan Wilson el espediente en 9 fojas utiles y lo asente pr. diligencia.

S'ORA DONA RAMONA CARRILLO.
S'N LUIS OBISPO, *Julio* 11, *de* 1846.

MI ESTIMADA PRIMA:

Ya que la cortedad del tiempo y mis ocupaciones me priven de la satifaccion deir a hacer a V. una visita le dirijo la presente con el principal objeto de saludarla afectuosmente deseandole completa salud en union de toda la familia. Ayunto a V. igualmenta para que se sirva entregarlo a D'n Juan el titulo de la tierra que compro al Yndio Romualdo que va acompanado a la escritura de venta y tendra V. a bien advertirle a D'n Juan, que le estendio a fabor del Yndio, por que asi me parecia prudente, por lo que hara que el referido Romualdo lo traspasa en su fabor con una diligencia que ponga el juez pues esta no es mas que una mera formalidad.

Deseo se conserve V. buena y que disponga del afecto sincero que le profesa su af'to primo.

Q. S. P.

PIO PICO.

Filed in office Dec'r 29th, 1852.

GEO. FISHER, *Sec'y.*

Translation, "B." Titles, Sales and Juridical Possession.

Juan B. Alvarado Colonel of Auiliary Militia of the Department of California.

I certify, that in the year 1842, being governor at that time, I ordered the person in charge of the mission of San Luis Obispo, then Don Mariano Bonilla, to distribute to several of the Indians of said establishment from the vacant lands belonging to that mission, such separate parcels of land as he might deem proper, proportioning them to the merits and abilities of each one, and putting them in possession immediately.

In consequence of this order, said employee reported that he had complied with it, and that to the Indian Romualdo had been granted the place called the Chorro, in extent that which said Senor Bonilla had marked out for him, in quiet and peaceful possession of which he has remained up to this date, and at the request of the interested party for the purposes which it may serve, I give this in Monterey, on the second day of May, one thousand eight hundred and forty-six.

(Signed) JUAN B. ALVARADO.

I, the subscriber, certify that in the distribution which I made of separate pieces of land in the establishment of San Luis Obispo, by order of the government in the year 1842, to the Indians of

that establishment, I assigned to Romualdo as his property, the piece of ground which he occupied by the name of his garden on the arroyo of the Chorro, designating as his boundary on the side of the establishment, the source of the stream which waters said land, and on the other side, the (angle formed by the hills,) its extent being one thousand varas long, a little more or less, from S. E. to N. W., and three hundred in breadth from S. W. to N. E., which garden, according to the testimony of the other Indians, he, the said Romualdo, has occupied for a long time, and for this reason it was assigned to him as his own, having offered to obtain from the government the corresponding title, and in testimony I give this at the request of the party interested, in San Luis Obispo, on the 25th of June, 1846.

(Signed) MARIANO BONILLA.

In the pueblo of San Luis Obispo, in Upper California, on the twenty-seventh day of the month of June, in the year one thousand eight hundred and forty-six, before me, Victor Linares, provisional justice of the peace of said pueblo and its demarcation, and the witnesses of assistance, with whom I act in the established form for want of a notary public, appearred the Indian Romualdo and Don Juan Wilson, which person I certify to know, and the former said that for himself, and in the name of his heirs and successors, and of whoever of them might have title, voice, and claim in any manner, he grants in legal sale and perpetual alienation, to Don Juan Wilson, a land which belongs to him in fee, in extent five or six hundred varas, known by the name of "Huerta de Romualdo," and is situated N. W. of this pueblo, between its lands and those of Don Juan Wilson, and though he presents no title of grant and ownership, yet it appears from the testimony of honest men, that the said garden is the property of the aforementioned Indian, and he declares that it is free from all incumbrance, whether public, perpetual, or temporal, special or tacit, general and expressed, and as such he sells it, that (the second part) may enjoy, exchange, alienate and dispose of it as his own, acquired by just and lawful title, the vendor acknowledging that he has received the sum of one hundred and fifty dollars, the value of said land, and the delivery not being made in pursuance, he renounces the laws respecting it and those concerning the proof of its payment and receipt, and from this time foward he releases, desists, retires, and withdraws from the dominion and possession, the ownership, title, recourse, or whatever right he may have in the aforesaid land, and he renounces and transfers it to Don Juan Wilson, that as his own, he may dispose of it; and he confers on him irrevocable power with free, full, and general administration, the vendor obliging himself that this sale shall be certain, sure, and effective, and that no person shall molest him or enter suit against

his ownership and possession, nor shall any incumbrance appear against the land, and for the legality and validity of this, the vendor binds all his property in present possession or which he may hereafter obtain, and he submits himself with it, (the property,)to the laws and jurisdiction of the judges who may have cognizance of such cases, as a definitive sentence consented to and passed, with the authority of res judicata, and as such he receives it.

In testimony of which he acknowledged this, and did not sign, because he did not know how, but made a cross; the witnesses to the instrument being Don Jose Maria Carrasco, Don Nicolas Carpia, and Don Tomas Herrera, to which I, the aforementioned justice, certify.

(Signed) ROMUALDO. his ✕ mark.

(Signed) VICTOR LINARES.

Ass'tg witnesses:
(Sg'd) JOSE GARCIA,
(Sg'd) J. MARIANO BONILLA.

This document was made out on common paper, for want of that of the corresponding stamp.

Date as above.

(Signed) LINARES.

To the Justice of the Peace of San Luis Obispo:

Juan Wilson, resident in the district of Santa Barbara, in the most proper manner, appears and represents, that having obtained the ownership of the Chorro, as appears by the act of sale which he duly transmitted herewith, as well as the documents, which, for want of titles, prove that it was granted to the Indian Romualdo, (who sold it to him) some years since, he prays you will see fit to give him the judicial possession, naming the day and hour on which to verify it, by which he will receive favor, which he swears, &c., &c.

San Luis Obispo, June 28th, 1846.

(Signed) JUAN WILSON.

SAN LUIS OBISPO, *June 28th*, 1846.

In conformity with the request contained in the present instance on the 29th inst., the coterminous neighbors, (colindantes,) being previously summoned, the juridical possession which he solicits will be given to the party interested.

I, the justice of the peace (provisionally) of San Luis Obispo, and its demarcation, thus decreed and signed.

(Signed) LINARES.

In San Luis Obispo, on the twenty-ninth day of the month of

June, one thousand eight hundred and forty-six, present, Don Juan Wilson, I informed him of the preceding order, and he acknowledged notice, and I noted it officially, which I certify with the two assisting witnesses, for want of a notary public.

(Signed) VICTOR LINARES.

Ass'tg witnesses:
(Sg'd) JOSE GARCIA,
(Sg'd) ENRIQUE TOMASON.

On the same day written summons were sent to Don Francisco Villa, as in charge of the land of Senor Oliviet, which adjoins the place called by the name of Chorro, to be present at the measurements which are to be made, and I noted it officially, and signed with the assisting witnesses.

(Signed) VICTOR LINARES.

Asst'g witnesses:
(Sg'd) JOSE GARCIA,
(Sg'd) ENRIQUE TOMASON.

In the pueblo of San Luis Obispo, in the twenty-ninth day of the month of June, in the year one thousand eight hundred and forty-six, Don Francisco Villa presented himself, in compliance with the summons sent him on the day previous, and I noted it officially, and signed in rubric.

(Rubric of Linares.)

On the same day, month and year, I, the provisional justice of the peace of San Luis Obispo, accompanied by the assisting witnesses and coterminous neighbors (colindante) before named, went to the place named Chorro, or garden of Romualdo, which is situted about an league and a half N. W. of the principal edifice of San Luis Obispo, for the purpose of proceeding to measure the land, and I noted it officially, and signed it with those of my assistance.

(Signed) VICTOR LINARES.

Assist'g witnesses:
(Sg'd) JOSE GARCIA,
(Sg'd) ENRIQUE TOMSON.

In the place known by the name of Chorro, or Huerta de Romualdo, on the same day, month and year, I, the provisional justice of the peace of San Luis Obispo, and its demarcation, present, Don Juan Wilson, caused to be measured a cord for the purpose of measuring the land, and a cord was measured twenty-five varas long, and two stakes tied to its extremities, and in testimony, I made official note of it, which I signed with assisting witnesses.

(Signed) VICTOR LINARES.

Asst'g witnesses:
(Sg'd) JOSE GARCIA,
(Sg'd) ENRIQUE TOMSON.

In the same place, day, month, and year, I, the provisional justice of the peace of San Luis Obispo and its demarcation, accompanied by assisting witnesses, for want of a professional surveyor I decided to appoint from the bystanders two measuring rope-bearers, and those appointed were Don Vicente Feliz and Don Ynocente Garcia, who accepting the office, made oath, by God our Lord and the holy cross, to discharge its duties faithfully to the best of their knowledge and understanding; and I made official note of it, which I signed with the assisting witnesses.

(Signed) VICTOR LINARES.

Asst'g witnesses:

(Sg'd) JOSE GARCIA,

(Sg'd) ENRIQUE TOMSON.

In the same place, day, month, and year, I, the provisional justice of the peace of San Luis Obispo and its demarcation, accompanied by the assisting witnesses and other persons aforementioned, present Don Juan Wilson, went to the angle (of the hills) shown in the map, and after examining the instruments which go with the record of proceedings, (espediente,) and prove this land to have been the property of Romualdo, having marked that point with some sycamores, on which Don Juan Wilson carved a cross and stamped his mark, the measurement was commenced, taking the cordel by its extremities, and going from N. W. to S. E. along the bank of the arroyo del Chorro, forty-three cordels, to a sycamore which is the boundary line of Senor Oliviet, and it was marked with a cross, which Wilson carved, and his mark, which he also stamped on it in presence of all the bystanders. Thence drawing the cordels S. W., (19) nineteen cordels to the foot of the cerro called that of Romualdo, this point being marked with a large oak, on which the aforesaid Wilson stamped his mark and carved a cross, designating it as a boundary on that side. It is to be observed that a right line from the sycamore where the first measurement ended to the said oak passes through the source of the running stream of the Chorro and a sycamore, also marked as the others; thence continuing the measurement N., to terminate with the boundary of another piece of land belonging to Wilson, forty-four cordels distant; thence N. E. five cordels, to the place of beginning, with which the measurements were concluded, and the boundaries designated as being in the aggregate one hundred and eleven cordels long, or two thousand seven hundred and seventy-five Spanish varas; and that Don Juan Wilson might manifest himself to be the lord and owner of the land, I took him by the hand, and in a loud voice said to him: in the name of the Mexican nation I give juridical possession of the land which you have purchased, and which has just been measured; and I directed him to make some demonstration of having acquired the useful and direct do-

minion, and with it the ownership of the land, and he, showing himself to be sole lord and owner of it, dug up earth, pulled up grass, and threw stones, with which the act was completed, and I signed with assisting witnesses.

(Signed) VICTOR LINARES.

Ass'tg witnesses:
(Sg'd) JOSE GARCIA,
(Sg'd) ENRIQUE TOMSON.

SAN LUIS OBISPO, *June 29th*, 1846.

Let these original official papers be given to the party interested, to make such use of them as he may see fit, in testimony of acquisition of ownership, and let them be entered in the proper book.

(Signed) LINARES.

SAN LUIS OBISPO, *June 30th*, 1846.

In compliance with the foregoing order, on this day this record of proceedings (espediente) was delivered to Don Juan Wilson in 9 written leaves, and I made note of it officially, which I signed in rubric.

(Rubric of Linares.)

It has been registered in the proper book on folios 17, 18, 19, and 20.

(Signed) VICTOR LINARES.

"B."

[Gob't of the Dep't of Cal'a.] Pio Pico Constitutional Governor of the Department of California.

Whereas the Indian Romualdo has made it appear that for a long time he has legally owned a piece of cultivated land of five hundred yards square in this place, which he acquired by a proper grant, and as he has no document to prove it, in order to justify his right in all future time, using the powers which are conferred on me, in the name of the Mexican nation I have confirmed the grant of said land, declaring to him the ownership by these presents, under the following conditions, viz:

1st. He may enclose the five hundred yards of land which are again granted him without prejudice to the roads and servitudes, and enjoy it freely and exclusively, making such use or cultivation of it as he may see fit.

2d. He will request the proper magistrate to give him juridical possession in virtue of this order, by whom the corresponding boundaries will be marked out, which will be designated by the necessary land marks.

In consequence I order that the present title being held as firm and valid, it be registered in the proper book, and delivered to the interested party for his security and other purposes.

Given in San Luis Obispo, on this common paper for want of stamped, on the tenth of July, one thousand eight hundred and forty-six.

(Signed) PIO PICO.
(Signed) JOSE MATIAS MORENO,
Secretary.

In San Luis Obispo, on the eleventh day of the month of July, in the year one thousand eight hundred and forty-six, before me, Inocente Garcia, auxiliary magistrate, and the assisting witnesses, with whom I acted in the established form, appeared the Indian Romualdo, whom I certify I know, and said, that having acquired from the departmental government the title of the fruit garden called by his name, and he having alienated it by sale to Don Juan Wilson, as appears by the document which he presented, he transfers said title to the beforementioned Don Juan Wilson, for the greater security of the sale made, and in testimony I made official note of it, which I signed with the assisting witnesses, Romualdo not doing so, as he did not know how to sign.

(Signed) INOCENTE GARCIA.

Ass'tg witnesses:
(Sg'd) JOSE GARCIA,
(Sg'd) ENRIQUE TOMSON.

To the Justice of the Peace:

Juan Wilson, a resident of the district (partido) of Santa Barbara, before you in the most proper manner appears and represents, that in virtue of having purchased of the Indian Romualdo the land shown by the title and map which he duly transmits herewith, as also the act of sale and transfer of said title to him by the aforementioned Indian, he requests that you will have the goodness to give him the juridical possession of said land, naming the day and hour on which it ought to take place; therefore, he prays you to accede to his request a favor which he expects, excusing this common paper for want of stamped.

San Luis Obispo, July 11th, 1846.

(Signed) JOHN WILSON.

SAN LUIS OBISPO, *July* 11, 1846.

In conformity with this request, on the 12th inst. the juridical possession he solicits will be given to the party interested.

I, the auxiliary justice of the peace of San Luis Obispo and its demarcation, thus decreed and signed.

(Signed) GARCIA.

In San Luis Obispo, on the eleventh day of the month of July, one thousand eight hundred and forty-six, present Don Juan Wil-

son, I informed him of the foregoing order and he acknowledged notice, and I noted it officially, which I certify with two assisting witnesses for want of a notary.

(Signed) INOCENTE GARCIA.

Ass'tg witnesses.
(Sg'd) JOSE GARCIA,
(Sg'd) ENRIQUE TOMSON.

In the place known by the name of La Huerta de Romualdo, on the 12th day of the month of July, in the year one thousand eight hundred and forty-six, I, the auxiliary justice of the peace of the demarcation of San Luis Obispo, accompanied by my assisting witnesses, caused to be measured a cord for the purpose of making the measurement of the land, and a cord was measured twenty-five Spanish varas long, and at its extremities two stakes were tied, and in testimony I noted it officially, which I signed with those of my assistance.

(Signed) INOCENTE GARCIA.

Assisting witnesses.
(Sg'd) JOSE GARCIA,
(Sg'd) ENRIQUE TOMSON.

In the same place, day, month, and year, I, the justice of the peace of San Luis Obispo and its demarcation, accompanied by assisting witnesses, there being no professional surveyor, I decided toname from the bystanders two measuring rope-bearers, and those appointed were Don Vicente Feliz and Don Mercurial Garcia, who accepting the office, made oath by God our Lord and the holy cross, to discharge its duties faithfully and truly according to their knowledge and understanding, and I made official note of it, which I signed with those of my assistance.

(Signed) INOCENTE GARCIA.

Ass'tg witnesses:
(Sg'd) JOSE GARCIA,
(Sg'd) ENRIQUE TOMSON.

In continuation, in the same place, day, month, and year, I, the justice of the peace of San Louis Obispo and its demarcation, accompanied by those of my assistance, and other persons aforementioned, Don Juan Wilson being present, we passed to a corner marked on the map which did belong to the Indian Romualdo, and which now pertains to Don Juan Wilson, which point was designated by a sycamore tree, which serves as a bound with another piece of land also belonging to Wilson, and the measurers drawing the cordel in direction to the S. E., along the bank of the arroyo called that of the Chorro, forty-three cordels to a sycamore marked with a cross cut with an axe on the tree; thence continuing the

measurement S. W. to the foot of the cerro called that of Romualdo, nineteen cordels, this point being marked by an oak, which serves as a bound, on which a cross was carved; then, before measuring in another direction, we went back on the main line to a sycamore, which is at the source of the running water of the Chorro, and I directed Don Juan Wilson to make there another cross, which should show that place to be a boundary with the lands of the Indian Pedro Maria, and he did so. We then returned to the oak, and the measurers drew the cordel in a straight line northerly ot a rock, where Romualdo has always dwelt, distant thirty cordels; thence the measurement was continued N. W. fourteen cordels to an angle formed by the hills, where are several sycamores, which serve as a boundary with the rancho of Los Osos; thence five cordels to the place of beginning, with which the measurement was finished, and the limits and boundaries marked; and in order that Don Juan Wilson, to finish this act, should show himself to be the absolute lord and owner of the land, I took him by the hand, and in a loud voice said to him: in the name of the Mexican nation I give you judicial possession of the land which has just been measured for you, and I direct him to make some demonstration of ownership, and of having acquired the useful and direct dominion, and he manifested himself to be the only lord and owner of it, dug up earth, pulled up grass, and threw stones, with which the act was concluded, and I signed with the assisting witnesses, which I certify.

(Signed) INOCENTE GARCIA.

Asst'g witnesses:

(Sg'd) JOSE GARCIA,

(Sg'd) ENRIGUE TOMSON.

IN SAN LUIS OBISPO, *July* 12, 1846.

Let these original official papers be returned to the party interested, that he may make of them the use he may see fit, and as a testimony of acquisition of ownership, and let them be entered in the corresponding book.

(Signed) GARCIA.

SAN LUIS OBISPO, *July* 13, 1846.

In compliance with the foregoing order, on this day the record of proceedings (espediente) was delivered to Don Juan Wilson, in 9 folios, and I noted it officially.

SAN LUIS OBISPO, *July* 11, 1846.

TO SENORA DONA RAMONA CARRILLO.

MY ESTEEMED COUSIN: As want of time and my engagements prevented me the satisfaction of going to make you a visit, I direct to you this letter, with the principal object of saluting you affectionately, wishing you perfect health, together with all your family.

I also transmit with this, that you may have the goodness to deliver it to Don Juan, the title of the land which he bought from the Indian Romualdo, which accompanies the act of sale. Be pleased to call the attention of Don Juan to the fact that it was made out in favor of the Indian, because it seemed to me most prudent; he will, therefore, cause the said Romualdo to transfer it to him by an official act, which the magistrate should make out, but this is only a mere form. Wishing you may remain well, and dispose of the sincere affection which is professed towards you by your cousin, who is at your feet.

(Signed) PIO PICO.

Ex. C. R. P.

I certify the foregoing to be a true and correct translation from the original Spanish document on file in this office in case No. 50, John Wilson, for the place named "Huerta de Romualdo," annexed to the deposition of "Pablo de la Guerra."

(Signed) GEO. FISHER.

Filed in office February 17, 1852.

(Signed) GEO. FISHER.

Opinion.

JOHN WILSON
vs.
THE UNITED STATES.

For the place called "Huerta de Romualdo," in San Luis Obispo County, containing 1,500 varas square of land.

In the claimant's petition it is alleged, that in 1842 the alcalde of San Luis Obispo, by direction and authority of Alvarado, then governor of California, gave to Romualdo (an Indian) the small tract of land in question, the boundaries of which were established by the alcalde; that Romualdo sold and conveyed it to the petitioner June 27, 1846; that juridical possession was given the next day; that on the tenth day of July, 1846, Gov. Pio Pico gave a new and formal grant of said land to said Romualdo; that on the following day Romualdo confirmed his former conveyance to the present claimant, who was immediately again put into judicial possession of the premises.

So far as the allegation that a grant was made to Romualdo, under the direction of Governor Alvarado, by the alcalde is concerned, there is no sufficient proof of the fact. The only evidence of it is found in the certificate of said Alvarado, made long after his official capacity ceased, stating that in 1842, while he was governor, he ordered Bonilla, then in charge of the mission, to distribute to several of the Indians of that mission such separate parcels of land as he might deem proper, proportioning them to the merits and abilities of each one, and putting them in possession

immediately, and a like certificate by Bonilla that he had assigned the land in question to Romualdo, and that he had offered to obtain from the government the corresponding title.

The certificates given long after the official functions of the signers ceased, have no official character which makes them evidence of the facts contained in them. These facts must be sustained by the proper official documents or oral proof, where evidence of that character is admissible, sanctioned by the solemnity of an oath. These certificates were prepared to be presented to the governor in 1846, when they were made, in order to obtain his grant of the land to Romualdo. They conveyed to that functionary information which was designed to induce him to regard favorably the applicant and the application, and to show the propriety in the *excise* of the broad discretion given to the governor in such cases of granting the solicitation.

For this purpose they were used. But for the purpose of proving here that a concession or grant of any character was made in 1842, they are incompetent as evidence. The unofficial certificate of a former governor of the acts of his administration, cannot take the place of official cotemporaneous documents, or of the solemn oath, by which the verity of human testimony is required to be sanctioned.

But if these certificates were regarded as legal evidence, they are not sufficient to prove a grant of the land by the Mexican government to Romualdo. The alcalde had himself no power to grant; he does not appear to have been commissioned by the governor, (even if the latter had power to grant by substitution,) to grant. The distribution seems intended as nothing more than a temporary arrangement, evidently contemplating if grants should be obtained, it should be on the subsequent application of the several beneficiaries to the governor in the usual manner, and upon a proper showing.

This is evidence by the statement contained in Bonilla's certificate, that he offered to obtain the grant for Romualdo. No grant was ever obtained, and in truth none is pretended to have been obtained from any competent authority until that signed by Pio Pico, in 1846. The rights of Romualdo to the land then, must depend on the validity of the last mentioned document. The grant issued in 1846, is presented, and the signatures of Pio Pico, as constitutional governor of the department of Californias, and Jose Matias Moreno, as secretary ad interim, which are upon it, are proved to be genuine. Its date is July 10, 1846. The question whether a grant issued at that date by Governor Pico is valid and entitled to confirmation, necessarily arises. The flag of the United States was raised at Monterey, and possession taken of the country on the seventh day of the same month. It was a conquest by our nation from Mexico, then in open war, and the possession

held at the date of this grant has never been relinquished by the government. The respective rights and powers of the two legitimate nations over the public domain, when one possesses itself by conquest of territory belonging to the other, are well settled among writers on international law. By such conquest, and during the occupation under it, the territory passed under the allegianec and sovereignty of our own nation. In the case of the Foltina, 1 Dodson Adm'n Rep't, 450, it is said, that "no point is more clearly settled in the courts of common law, than that a conquered country forms immediately a part of the king's dominion." (Campbell vs. Hall, Cow. R., 208.) In the United States vs. Haywood, 2 Gall. R., 485, Judge Story declared, that in case of such occupation by conquest, the sovereignty of the conquered nation was of course suspended, and its laws no longer could be rightfully enforced, or be obligatory upon the inhabitants who remained and submitted to the conquerors. But although the sovereignty of Mexico by such conquest was thus suspended, it had not permanently passed under our own sovereignty. In the language of the court in the case above cited, the right which existed was the mere right of superior force, the allegiance was temporary, and the possession not that firm possession which gives to the conqueror plenum dominios et util, the complete and perfect ownership of property. While the country was thus held by conquest, neither the conqueror nor the government of the conquered territory had the full, unrestricted, and unconditioned power of granting the public domain thus held. The cession of national domain is an act of full sovereignty, and requires in the granting power the union of possession and the right to the territory. A grant made by the conqueror while territory is thus held by conquest, is subject to the contingency of the retaking of the territory by the original possessor, or its restoration to him at the close of hostilities by the treaty of peace. In that event, "the purchaser of any portion of the national domain takes it at the peril of being evicted by the original sovereign owner when he is restored to the possession of his dominion." Wheat. Int. L., 441. The conqueror has the possession of the territory, and exercises over it the dominion of sovereign power, but the contingency above mentioned reduces his title to something less than that firm and settled ownership which the granting of an indefeasible estate requires. His grant, however, would be subject only to the contingency which, in the case from Dodson, is denominated "the shadowy right of the former proprietor." (1 Dodson R., 450.) The power of the original proprietor of territory thus held under conquest by the enemy, is still more restricted possession; the most essential ingredient and the most palpable evidence of full title is still wanting. While it is true that the defeated nation may retake the conquered territory, it is equally true that the

possessor may retain it if he can, and although the event of the war may restore it to the original owner, it is also certain that the same power which wrenched it from him, may be able to dictate terms of peace without restoring the acquisition. A grant made by the original proprietor within territory thus held by conquest from him, could become good only by the restoration of the territory by reconquest or by treaty. Mexico was never possessed of conquered California, but, on the contrary, surrendered all right to it on the termination of hostilities, by the treaty of Guadalupe Hidalgo. If this treaty had been silent on the subject of the conquered territory, the title of our government to it would have been unquestionable. On the conclusion of war by treaty, if nothing be said about the conquered country or places, they remain with the conqueror, and his title afterwards cannot be called in question. But the treaty is not silent on the subject. By it, the conquered territory remains with, and becomes the absolute property of the American nation, subject only to private rights. According to all the authorities, both foreign and American, the law of post limine is precluded by such a treaty, and no such rights derived from the ceding nation after the conquest can be valid.

Vattel, 395; 1 Kent, 116; Wheat. Int. Law, 572; The Fania, 6; Robinson Admiralty Rep., 106.

The same principle by which, on the cession of such territory to the conqueror by a treaty of peace, titles derived in the meantime from the conquerer are made perfect, those which are made by the original owner become forever inoperative and void.

The principle above cited, that possession of, and the right to the thing granted, must exist together in the grantors, in order to constitute a valid grant, is stated by Chancellor Kent to be a necessary principle in the law of property in all systems of jurisprudence; 1 Kent Com., 150; and its application to cases of the alienation of the national domain is undoubted. The Supreme Court of the United States have repeatedly declared and applied this principle in a manner which both establishes it as authority and illustrates its application. By the treaty of St. Ildefonso, Spain ceded Louisiana to the republic of France on the first of October, 1800, but did not make formal delivery of possession until December 20th, 1803. In the meantime France, by the treaty of Paris, ceded the same territory to the United States. This treaty bears date April 30th, 1803, but the delivery of possession was not made until the 25th of the following December. Between the signing of the treaty of cession by Spain to France, and the delivery of possession to the latter, the authority of the former continued in the exercise of their functions in the province. The power of those authorities to preserve the peace and order of community, until the new sovereignty took possession, was admitted. A grant of land made by those authorities, between

the signing of the treaty, was declared, nevertheless, to be without authority and void. The ratification of the treaty of cession was held to be retroactive, and thereupon the treaty became binding on the respective parties from the day of signing. In the intermediate space of time the ceding party had parted with its sovereign right to dispose of its domain to third persons, and its grants thus made, were therefore void. The possession remained in the original owners, but the right to the subject of the cession had been disposed of by solemn contract.

U. States vs. Reynes, 9 How. R., 127.

Davis vs. Police Jury of Concordia, Ib. 280.

And in case of disputed boundaries, grants made by the nation in full possession of territory, ultimately recognized to belong to a coterminous power, have repeatedly been declared to be void.

Hencourt vs. Guillard, 12 Wheat. R., 528.

Henderson vs. Poindexter, 12 Wheat. R., 535; 11 Pet. R., 209.

Poole vs. Fleeger, 12 Pet. R., 521.

Grants, then, which were made by the Mexican authorities in the conquered country while held by our Army could have become valid in no contingency, excepting by reconquest or by restoration at the conclusion of hostilities. These contingences never happened, but, on the contrary, being relinquished to the conqueror by the treaty of peace all claim of Mexico ceased, and all the contingent grants became null, the right of post limine having ceased forever. The treaty of Guadalupe Hidalgo guaranties property, and this must be considered as embracing grants from the Mexican government, whether the title under them was complete or merely inchoate and imperfect. This does not, however, embrace every semblance of title. The guarantee applies only to rights founded on justice and good faith, and based on authority competent to their creation. (U. S. vs Reynes, 9 How. R., 651.)

And a grant made after the sovereign power over the territory had been superseded by the conquest of the enemy, was not made by competent authority, and is not made good by the treaty. The grantee of a government, whose territory is held by a public enemy, must be presumed necessarily to know the defect of his title, and to take it cum onera. A question of some difficulty arises as to the limits and extent of the territory which was held by conquest at the time of issuing this grant.

We know, historically, that the American flag was raised at Monterey on the 7th of July, 1846, and the conquest of California proclaimed by the officer in command. The whole region of country to the north of this point fell immediately into the undisputed power of the invading forces, but the southern portion of the present State of California was not so soon actually occupied by the American troops. It can rarely, and perhaps never happen in case of the conquest of an extensive province, that every portion of its

territory should be occupied by the invading army at once on the first successful planting of the flag of their nation. Some little time must necessarily elapse before every detachment of troops can be dislodged, every town surrender, and every settlement subdued. Where there is no formal surrender under articles of capitulation it becomes a difficult question to determine precisely the limits of the territory which can be regarded as conquered. Such territory can, from the nature of the case, have no established and admitted boundaries. The invasion is a matter of mere force, conquest the result of successful invasion, and the extent of the enemies country which must be regarded as conquered, must be that over which he proclaims the authority of a conqueror, from which he expels the authority of the former possessor, and within which he is able to maintain his own. When the power of the established government in one of its provinces is broken, and fails to protect its citizens from the force of an invading enemy, who brings it within the exercise of his own power, commands its resources, and establishes the sovereignty of his own flag in place of the former government, the conquest must be regarded as made. And as before the ascendency of his power, the sovereignty of the former government was not annihilated by a casual invasion or temporary occupation by the enemy of minor points. So the general character of a conquered country is not destroyed by the partial and temporary occupation of unimportant places by their former possessor, after the conqueror is fully established, and while the changes incident to a conquest are being made. And a conquest thus made, and fully and permanently maintained, must be regarded, for every purpose connected with the disposition of the public domain, as commencing at the time of the first permanent planting of the standard, and as extending to the whole conquered territory. On this principle the successful establishment of the power of the American forces in Upper California on the 7th July, 1846, fixes the date of the conquest; anterior to that time the commandant of the Mexican forces had been in the north, but the north yielded without a struggle, and was at once in the power of American forces, raised chiefly among the inhabitants of the country. A powerful squadron of the American Navy was upon the coast and could command every harbor, and the means of defence possessed by the Mexican authorities were inadequate for any purpose of successful resistance. Within five weeks from the first raising of the standard at Monterey the American forces had marched throughout the territory, and possessed themselves of every town, and established undisputed authority in every part of the department. The forces of the enemy in the meantime were scattered, and the chief officers, both of the military and civil government, left the country. The power of the Mexican authorities yielded, and that of the Americans was in the ascendant throughout all California from the moment of the

raising of the flag, and the successful occupation of different points by the military force was the result of the establishment of the new sovereignty. But if the question whether the land granted was within the territory conquered, at the time of the grant, became important, it *be* necessary to decide how far the conquered territory extended at that date. This would be really a question of territorial boundary between the sovereignties of the two nations at the date specified, and must be decided on the same principles of other cases of conflicting national jurisdictions. Questions of national boundaries have uniformly been held by the Supreme Court of the United States as partaking of political rather than judicial character, and tested by this criterion it is believed that the whole Upper California is embraced within the conquest of July 7th. In the instructions given by the executive branch of our government to Commodore Sloat, then in command of the American squadron on the Pacific, the conquest and occupation of the entire territory of California was in a certain contingency directed. On the happening of that contingency possession was taken, and his proclamation, dated at Monterey, July 6, 1854, the day before the raising the American flag, announced the intended capture of the country, and his determination to carry the standard of the United States throughout California. The subsequent reports and messages of an entire official character from the executive branch of the government, clearly refer to this taking possession of the country as the date of its military occupation. Congress has not, by direct and positive declaration to that effect, fixed the day which is to be regarded as the date of the conquest, but in the act of March 3d, 1851, organizing this commission, the 7th of July, 1846, is mentioned in connection necessarily to imply this. The 14th section of that act raises the presumption of a grant in certain cases by the Mexican government, but it expressly limits such presumption of its issuance to the time anterior to the date of raising the flag at Monterey, leaving the unavoidable inference that the power in the Mexican authorities to grant lands ceased throughout California on the happening of that event. The intention of the fourteenth section, in which the limitation occurs, is manifestly of the most liberal character in behalf of those in whose favor the provision is made, and was intended to raise the legal presumption of a grant in every case where a valid grant could in fact have been issued by Mexican authority, and by restricting the presumption to the period anterior to the seventh of July; that date seems, at least by necessary implication, to be designated as the time when the power of the Mexican government to make grants was superceded. Nothing is found in the action of any department of the government tending to recognize the idea that any portion of Upper California was to be regarded as remaining under the sovereignty of Mexico after the first military possession of Monterey, or that it was so claimed

by the supreme government of Mexico. And if it had been that the latter claimed that grants made by the local authorities after that date in any part of the department, were to be recognized as valid after the cession, they would most assuredly have claimed for such rights a guarantee in the treaty. The treaty of Guadalupe Hidalgo as originally signed by the Mexican commissioners, and as transmitted to the United States Senate, contained a solemn declaration on the part of Mexico, "that no grant whatever of lands in any of the territories aforesaid has been made since the 13th day of May, 1846." This article (the tenth) was stricken out by the Senate. If it had been permitted to remain it would have excluded from recognition all grants of a date subsequent to that mentioned. As the treaty was finally ratified by both parties, without specifying any time when the power of Mexico to grant lands in the ceded territory was to be regarded as ceasing, general and recognized principles of law must be the test by which all doubtful concessions must be determined. We have already referred to the uniform and repeated decisions of the courts, that a grant made after the signing of a treaty of cession, and its ratification by the high contracting parties, is void. In Davis vs. The Police Jury of Concordia, 9 How. R., 280, it is said by the court, that "before the signatures of a treaty, and after negotiations have begun for a cession of territory, grants of land cannot be made in it without being subject to confirmation by the sovereign to whom the transfer shall be made. If the mere negotiations in regard to a cession, the proposition to cede not yet ripened into an undertaken to alienate on one part or to receive the cession on the other, deprives the owner of the power to make valid grants, the same want of authority would exist where grants were made of territory just falling into the possession of a conquering foe, and with the evident intention to deprive him of the fruits of his conquest. The want of good faith on the part of such grantor, as well as on the part of the grantee, would deprive the latter of the right of a bona fide purchaser. If such title would be valid as against the successful belligerent power, the defeated nation need but send its agent with its retreating army, and as the foe carried his conquering standard from district to district, deliver to the individual subject title-deeds of the territory at the moment when its conquest became inevitable, and retiring, give place to the advancing army. Such titles, I apprehend, have never been recognized on the cessation of hostilities as defeating the recognized rights of the conqueror, or establishing individual titles, which, at the restoration of peace, would be regarded as valid without an express treaty provision for their recognition. If the conquest of the whole of California was not to be regarded as made on the day of the taking possession of the country on the 7th of July, we know of no criterion by which the date of the conquest of its several portions could

be determined. As to an isolated point, fort or seaport town, the time might well be known, but as to the broad plains, the sequestered valleys, and the mountain ranges in the interior, sparsely settled, and but little known, it would be impossible to make a distinction, and the attempt in adjudicating the validity of the grants depending on the question, at their date, would lead to insurmountable difficulties. From the view which we have taken of the question, we deem no such effort necessary. A consideration of the law and the facts presented brings us to the conclusion:

1st. That grants made by the Mexican authorities after the date of the conquest, are not protected either by the law of nations, or by the treaty of Guadalupe Hidalgo, and cannot be confirmed.

2d. That the conquest of California was accomplished at the taking possession and raising of the American flag at Monterey on the 7th day of July, 1846.

3d. That this conquest must be considered as embracing the whole territory of Upper California.

4th. That therefore the power of the Mexican government to grant land within any portion of California ceased at that date, and grants issued subsequent to that event are invalid.

Filed in office Dec'r 12th, 1854.

GEO. FISHER, *S'y.*

Decree.

JOHN WILSON
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is not valid, and it is therefore decreed that his application for a confirmation thereof be denied.

(Signed) ALPHEUS FELCH,
(Signed) R. AUG. THOMPSON,
(Signed) S. B. FARWELL,
Commissioners.

Filed in office Dec. 12th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of this board, that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that two transcripts of the proceedings and the decission in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of Cal., and the other be transmitted to the Attorney Gen'l of the U. S.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing fifty-five pages, numbered from 1 to 55, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 50 on the docket of the said board, wherein John Wilson is the claimant against the United States for the place known by the name of "Huerta de Romualdo."

In testimony thereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, [SEAL.] California, this thirtieth day of June, A. D. 1855, and of the independence of the United States of America the seventy-ninth. GEO. FISHER, *S'y.*

Endorsed: U. S. district court, southern district of California. No. 261. The United States vs. John Wilson. "Huerta de Romaldo." Transcript of the record from the board of U. S. land commissioners in case No. 50.
Filed July 12th, 1855.

C. E. CARR, *Clerk,*
By A. H. CLARKE, *Deputy.*

Notice of intention to prosecute Appeal.

No. 261.

United States District Court for the Southern District of California.

JOHN WILSON, Appellant,
vs.
THE UNITED STATES, Appellees.

Notice of intention to prosecute the appeal from decision of U. S. Land Commission.

John Wilson, claimant of the land called "Huerta de Romualdo," situate in the county of San Luis Obispo, in the southern district of California, hereby gives notice of his intention to prosecute an appeal from the decision of the board of commissioners in his claim for the said land, which claim was presented to the board of commissioners, and by them rejected; his claim being that which is numbered on the docket of said board No. 50, the transcript whereof is filed in this office, is numbered No. 261.

HALLECK, PEACHY & BILLINGS,
Atty's for Appellant.

Endorsed: Filed Sept. 22d, 1855.

C. E. CARR, *Clerk,*
By JOHN W. ROSS, *Dep'y.*

Petition for Review.

No. 261.

United States Dist. Court for the Southern Dist. of California.

JOHN WILSON, Appellant,
vs.
THE UNITED STATES, Appellees.

Petition of Appellant, praying the court to review the decision of U. S. Board of Commissioners.

Your petitioner, John Wilson, respectfully shows to this honorable court, that on the 17th of February, 1852, he presented his claim to the tract of land called "Huerta de Romualdo," &c., to the United States board of land commissioners, while sitting as a board, praying the said board to confirm to him said land, as is more particularly described in said petition and documentary and other evidence in the case, all of which is hereby referred to and made a part of this petition; that on the 12th day of December, 1854, the said board of commissioners decided upon the validity of said claim of the petitioners, and rejected it; that the transcript of said case was filed in the office of the clerk of the district court of the southern dist. of California on the 12th day of July, 1855, and that appellant's notice of intention to prosecute appeal was filed in said office on the 22d day of September, 1855. And your petitioner further shows, that the aforesaid tract of land is situate in the southern district of California, and he prays this honorable court to review the said decision of the said board of land commissioners, and to reverse it, and to confirm to the petitioner his title to the said tract of land.

HALLECK, PEACHY & BILLINGS,
Att'ys for Appellants.

Los Angeles, Sept. 22d, 1855.

Endorsed: Filed Sept. 22d, A. D. 1855.

C. E. CARR, *Clerk*,
By JOHN W. ROSS, *Dep.*

Order to take additional Testimony.

No. 261.

In the United States Dist. Court for the Southern District of California.

JOHN WILSON, Appellant,
vs.
THE UNITED STATES, Appellees.
Transcript No. 50.

On motion of H. W. Halleck, of counsel for appellant:

Ordered, that additional testimony may be taken by either party in the above entitled case.

Endorsed: Filed Oct. 9th, 1855.

C. E. CARR, *Clerk.*

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Minutes of the Court.

Tuesday, October 9th, A. D. 1855.

JOHN WILSON, Aplt., vs. THE UNITED STATES, Appellees. } No. 261. "Huerta de Romualdo."

On motion of H. W. Halleck, att'y for appellant, it is ordered that additional testimony may be taken by either party in the above entitled cause.

Summons.

UNITED STATES OF AMERICA,
Southern District of California, ss.

The President of the United States to P. Ord, U. S. Dist. Att'y for the South. Dist. of California, greeting:

Take notice, that a petition, a copy of which is herewith served upon you, has been filed against the United States in the district court of the United States in and for the southern district of California, on the 22d day of September, in the year of our Lord one thousand eight hundred and fifty-five, at the city and county of Los Angeles, in said district, by John Wilson, praying the court to review the decision of the U. S. land commission rejecting his claim to a tract of land called "Huerta de Romualdo," and that you are required to appear at said court, in said city, within ten days after the service hereof, if served on you within the county of Los Angeles, and within twenty days if served on you in the county of San Diego or San Bernardino, and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or the petitioner will apply to the court for the relief demanded therein.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Los Angeles, this 15th day of December, A. D. 1855. [SEAL]

C. E. CARR, *Clerk.*

Endorsed: I served this summons, together with a certified copy of the petition, upon P. Ord, U. S. dist. att'y for the southern dist. of Cal., by delivering to him personally a true copy of the same, at Los Angeles, in the southern district of California, on the 18th day of December, A. D. 1855.

EDWARD HUNTER,
U. S. Marshal.

Sworn to and subscribed before me.

Cl'rk.

Marshal's Costs.

Copying summons.....		60
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"	petition.....	3 00
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Answer of U. S. Att'y.

In the District Court of the United States for the Southern District of California.—Hon. Isaac S. K. Ogier, judge.

JOHN WILSON, Appellant,
vs.
THE UNITED STATES, Appellees. } No. 261. (Transcript No. 50.)

The answer of Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, to the petition of John Wilson for a review of the decision in said case of the board of United States land commissioners, while sitting as a board, says: That he denies all and singular each and every allegation in said petition contained. And further, this respondent denies generally the validity of the alleged title of the claimant to the land claimed by him. And the said respondent prays that this hon'ble court will affirm the decision of the said United States land commissioners, and decree the said alleged title to alleged tract of land to be invalid, and general relief.

P. ORD,
District Attorney of the United States
for the Southern District of California.

Endorsed: I have served this answer on Billings, att'y for John Wilson, by delivering to him a true copy of the same, at Los Angeles, Dec. 28th, 1855.

EDWARD HUNTER,
U. S. Marshal,
Pr. M. L. GOODMAN, *Deputy.*

Marshal's cost for serving answer, $3.00.

Filed Dec. 27th, 1855.

C. E. CARR, *Clerk.*

Order to take further Testimony.

No. 260.

Dist. Court So. Dist. of Cal'a, U. S. A.

THE UNITED STATES
vs.
JOHN WILSON.

On motion of F. Billings, of counsel for claimant, it is ordered, that either party may take testimony in the above entitled cause.

Jan'y 6, 1856.

Endorsed: Filed Jan'y 7th, 1856.

C. E. CARR, *Clerk.*

Minutes of the Court.

Los Angeles, January 7th. 1856.

JOHN WILSON, Appellant,
vs.
THE UNITED STATES, Appellees. } No. 261.

In this case, on motion of attorney for appellant, it was ordered by the court that leave be granted to take further testimony.

Deposition of Jose Mariano Bonilla.

Deposition of Jose Mariano Bonilla, taken before C. Sims, United States commissioner for the district of California, at the United States court-house, in the city of Los Angeles, on Wednesday, the 14th day of January, A. D. 1857, at o'clock p. m., on behalf of the appellant, by consent and agreement of parties, to be used in testimony in a certain cause now pending in the United States district court for the southern district of California, being case No. 261 on docket of said court, wherein the United States are appellees, and Juan Wilson is appellant. Present, P. Ord, U. S. att'y, on behalf of the appellees, and Halleck, Peachy and Billings, att'ys for appell't.

JUAN WILSON, Appellant,
vs.
THE UNITED STATES, Appellees. } No. 261.—"Huerta de Romualdo," or "El Chorro."

Jose Mariano Bonilla, a witness on the part of the appellant, being duly sworn, deposes and says as follows:

Quest. What is your name, age, and place of residence?

Ans. My name is Jose Mariano Bonilla; am 51 years of age, and reside in San Luis Obispo county.

Quest. Do you know the place called "Huerta de Romualdo," or "El Chorro?" If yea, where is it situated, and how long have you known it.

Ans. I know it; it is situated on the northwest of the mission buildings of San Luis Obispo, distant from the same about one league and a half; it is on the west side of the road called the Coast road, going from San Luis Obispo to the coast; the road passes upon the edge of it, the greater portion of the land lying to the west of it. This huerta is well known, and is so much so that it cannot be well mistaken; I have known the same since 1841.

Quest. What office did you hold, if any, under the Mexican government in the year 1842?

Ans. I was alcalde in San Luis Obispo, and also was empowered to distribute lands to the Indians, which power was a special one.

Quest. As such officer, did you receive any order or orders from the governor of California relative to the granting of lands in San Luis Obispo to the Indians? If yea, were those orders in writing? If in writing, can you produce them, and if not state what has become of them.

Ans. I did receive such an order, dated on the 9th September, 1842, from the government of California, and the same was in writing; it was from Governor Alvarado, which said order was deposited in the alcalde's office. In 1846 Col. Fremont passed through San Luis Obispo, from which time all public records of the alcalde disappeared, or were destroyed. I have searched for this and for other public papers since that time in the alcalde's office, and in other government offices, and have been unable to find it, nor do I know it to be in existence. I received various orders whilst alcalde upon the subject of the distribution of the lands, but the one of which I have spoken had reference to those previous orders, and directed, in a definite manner, how the lands should be distribted, and the pueblo founded. In the order of distribution the Indians were particularly mentioned. The order was directed to me as alcalde of San Luis Obispo.

Quest. State, as near as you can recollect, the contents of said order.

Ans. The order said, you will distribute suertes of land to the Indians according to their respective merits, and the number of their families, and their services, with the conditions that they would cultivate the lands, and should fence the same, and not alienate it. The order also directed, that after I should have measured the same, to give them a paper that might serve them as a title. The lands that were to be divided among the Indians were the lands of the mission, wherever the Indians might select them.

Quest. Did you ever know Romualdo; who was he, where did he live?

Ans. I did; he was a very old Indian, much favored by the mission and the government for his long services; he lived on this place called "Huerta de Romualdo;" I knew the Indian since 1841; he was on the place when I first knew him, and continued there until 1843, at which time he left his family at that place and went to work for Governor Alvarado; I think he died about the year 1845; I do not remember the exact date of his death; after his death his widow continued to reside on the same place. The time he worked for Alvarado was but a few months. The widow, as I understood, sold the place to Juan Wilson, but continued to live there till she died.

Quest. State what you did under the order you have mentioned, particularly so far as the Indian Romualdo was concerned.

Objected to by U. S. att'y.

Ans. I did not immediately give Romualdo the land he wanted, as I did the other Indians, because the land was of greater extension than that which I gave the others. The land which he wanted was the "huerta" where he lived. The Indian Romualdo afterwards brought me a special order from Governor Alvarado, dated in same year of 1842, (I do not remember the month,) which order directed me to put Romualdo in possession of the entire extension of the "huerta" upon which he lived.

(Answer above objected to by U. S. att'y.)

Quest. Were you acquainted with the handwriting of Gov'r Alvarado; was the said special order signed by him, and what has become of the order?

Ans. I know his handwriting and his signature. This special order was signed by him, with his genuine signature. The said order was lost, as all the other archives of San Luis Obispo. This order was deposited in the archives of San Luis Obispo; I have examined for it, and cannot find it.

Quest. Now state more particularly the words, if you can. If you cannot the words, then the substance of this special order.

Ans. The special order contained a recommendation of the particular good conduct of the Indian "Romualdo," and that I should put him in possession of his "huerta," declaring him to be the proprietor thereof. The order declared that I should concede him the land as the owner thereof.

Quest. State what, if any, conditions were to the second order.

Ans. It had no conditions.

Quest. State what you did under this special order.

(Objected to by U. S. att'y.)

Answer. I went with the Indian Romualdo upon the land, and measured and gave him possession of it, and I also gave him a paper of possession, and informed him that it was his.

Quest. To what land do you refer?

(Objected to by U. S. att'y.)

Ans. The Huerta of Romualdo.

Quest. Did you give the Indian Romualdo any title-papers?

(Objected to by U. S. att'y.)

Ans. I did not; he would not receive them because the Indian had said that the governor himself had offered to give him the title to the land.

Quest. Did you make any note or record of this transaction in the records of your office? If yea, what, and what has become of the records.

Ans. In the book of records that I kept of all the possession of lands given to Indians, I also noted this transaction. This book

of records is also lost with the other archives of which I have formerly spoken.

Quest. Describe particularly the land that you say you measured, and of which you say you gave the possession to the Indian.

(Objected to by U. S. att'y.)

Ans. The land is situated northwest from the houses of the mission of San Luis Obispo, one and a half leagues distant; it is one thousand varas in length, little more or less, and three hundred in width, a little more or less: it is wider in some places than in others; it is bounded on the northwest by the arroyo called "El Chorro;" on the northeast by the lands of an Indian called Pedro Maria; on the south and southwest by the "Cerritos;" on the northwestwardly there is a row of sycamore trees on an arroyo at the foot of the hills.

Quest. What marks the boundary line between this huerta and the lands of Pedro Maria?

(Objected to by the U. S. att'y.)

Ans. When I measured the line there was a fence there, but at the extremity of the line there were two trees; they are marked oak trees, and none other is near them.

Quest. State if this huerta was fenced at the time you gave possession; and if so, has it continued to be so.

(Objected to by U. S. att'y.)

Ans. This line between the huerta and the Indian Pedro Maria, was the only one that was fenced, being by nature fenced on the other sides by arroyo and Cerritos. The fence is not existing now.

Quest. How is the land called "Los Osos" situated in reference to this huerta, and what separates it from this huerta?

(Objected to by U. S. att'y.)

Ans. It is adjoining the huerta on the west side, and is separated by the "Cerritos" that I have mentioned, which continue on to the arroyo.

Quest. To whom are the "Los Osos" reputed to belong?

Ans. John Wilson.

Quest. Did the Indian have a house on this land, and cultivate it from the time you gave possession?

Ans. Yes; he had a house, and cultivated the land when I knew it, in 1841. He had a pole house on it, in which he lived with his family. He cultivated about one-fourth of the land, which said portion cultivated was immediately adjacent to the house.

Quest. What was the paper of possession that you say you gave to the Indian?

(Objected to by U. S. att'y.)

Ans. It was the measurement of the land, and describing the monuments of the boundaries.

Quest. Have you ever seen the paper since, or do you know what has become of it?

Ans. I have never seen it since, but I think the Indian lost it,

because he applied to me for a certificate, which I gave him. The Indian did not say that he had lost it, he only asked for that certificate. I gave the certificate after I was out of office. I did not give him a certified copy of the original paper, because I was out of office, and could not give a certified copy of it. I do not know what became of that certificate, as I never again heard of it.

Quest. State what the record in your office, which you say you made when alcalde, connected with the matter, set forth?

Ans. It contained a copy of possession; this was all that that book contained on the subject. The other separate orders relative to this matter, were filed in the office in their respective places.

Quest. Who is the present occupant of the huerta; how long has he been so, and in what manner has he occupied it?

Ans. John Wilson is the present occupant, and has been so since the year 1846, (I think;) he has cultivated a portion of the land which is fenced; he has a house on the same, and grazes a flock of sheep on the other portion of it.

Cross-examination by U. S. Att'y.

Quest. What quantity of the land did you distribute to the Indians of the mission of San Luis Obispo, in 1842; where was the land situated, and what was the extent in yards of the "suertes" given to each Indian?

Ans. About two miles of land immediately contiguous to the garden of the mission, and about another mile, at different points, where they had had previously their houses and gardens. I gave them in conformity to the size of their families; the maximum of the concessions being two hundred varas, and the minimum one hundred varas.

Quest. What was the size of Romualdo's family in 1842?

Ans. It consisted of his wife and adopted son.

Quest. Did the special order, that you say you received from Alvarado in the year 1842, directing you to give possession to Romualdo, specify or limit the quantity of land which you were to concede to him?

Ans. No; the special order said, put him in possession of the land known as the Huerta of Romualdo.

Quest. Did you or not know whether Gov'r Alvarado ever issued and delivered to Romualdo a title to this land?

Ans. I do not know.

J. MAR'NO BONILLA.

Sworn and subscribed to before me this 15th day of Jan'y, 1857.

C. SIMS, *U. S. Com'r.*

UNITED STATES OF AMERICA,

State of California, County of Los Angeles, ss.

I, C. Sims, United States commissioner for the district of Cali-

fornia, do hereby certify that the foregoing deposition of Jose Mariano Bonilla was taken before me in accordance with the request and agreement of the said attorneys, at the United States courthouse, in the city of Los Angeles, State of California, on behalf of the appellant; that the said Jose Mariano Bonilla was by me duly sworn, according to law, as a witness in said cause in the caption of this deposition mentioned; and after being so sworn, his testimony was by me reduced to writing in his presence and that of the said attorneys; and after having been by me carefully read to him, and by him corrected, as he desired, was by him signed in my presence.

In witness whereof, I hereto set my hand and affix my private seal, (having no seal of office,) this 15th day of January A. D. 1857.

[SEAL.]

C. SIMS, *U. S. Com'r.*

Endorsed: Filed this 15th January, 1857.

C. SIMS, *Clerk.*
By J. H. COLEMAN, *Dep.*

Minutes of the Court.

Monday, January 19th, 1857.

JOHN WILSON, Appellant,
vs.
THE UNITED STATES, Appellees.
} No. 261. "Huerta de Romualdo."

Now, on this day, this cause coming on to be heard, the parties appearing by their respective attorneys, the appellant by Halleck, Peachy & Billings, esq'rs, and the appellees by P. Ord, esq., U. S. att'y.

Whereupon counsel of appellant files the affidavit of John Wilson, showing the loss of the paper of juridical possession, and introduces the deposition of J. Mariano Bonilla as evidence.

Whereupon, after argument of counsel aforesaid, the same is submitted to and taken under advisement by the court.

Affidavit of Claimant as to loss of papers.

United States District Court Southern District of California.

THE UNITED STATES, Appellee,
vs.
JOHN WILSON, Appellant.
} No. 261. Trans. No. 50.

I, John Wilson, on oath say, that I am the claimant in this case; that I purchased the land in 1846, of the Indian Romualdo. That no paper connected with the title or possession of said Romualdo of the land has ever come to my possession or sight, save these papers which appear in the transcript. The Indian Romualdo died in 1846, and his wife in 1848; neither left any papers that I am aware of; if they did, I know not what has become

of them; I have made diligent inquiry for the paper of possession given by Alcalde Bonilla to Romualdo in 1842, but cannot find it; don't know where it is, and believe it is lost.

JOHN WILSON.

Subscribed and sworn to this 19th day of Jan'y 1857, before me.

C. SIMS, *U. S. Com'r.*

Endorsed: Filed Jan'y 19th, 1857.

C. SIMS, *Clerk.*

Minutes of the Court.

Monday, 9th February, 1857.

JOHN WILSON, Appellant, vs. THE UNITED STATES, Appellees. } No. 261. "Huerta de Romualdo."

Now, on this day, come the parties aforesaid by their attorneys aforesaid:

Whereupon the court delivered its opinion, confirming the claim of the appellant, and a decree was ordered to be entered up in conformity therewith.

Decree of Confirmation.

In the United States District Court, within and for the Southern District of California. Hon. Isaac S. K. Ogier, judge.

December Term, 1856.

THE UNITED STATES, Appellees, vs. JOHN WILSON, Appellant, } No. 261.

Transcript from the Board of Land Commissioners, No. 50.

This cause coming on to be heard on appeal from the decission of the board of land commissioners to ascertain and settle private land claims in California, upon the transcript of the proceedings and decision of said board, and the documentary and other evidence upon which said decision was founded, and also upon other evidence taken and filed in this court, and counsel for respective parties having been heard, it is ordered, adjudged, and decreed, that the decision of said board of land commissioners, declaring invalid and rejecting the claim of the appellant, John Wilson, to the land set forth and described in his petition to said board, and in the documentary and other evidence in this case, be, and the same is hereby, reversed.

And it is further ordered, adjudged, and decreed, that the title of the appellant, John Wilson, to the land so claimed by him, is a good and valid title, and that his claim to said land be, and the same hereby is, confirmed.

The land of which confirmation is hereby made, is situated in the county of San Luis Obispo, is known by the name of "Huerta de Romualdo," or " El Chorro," and is in quantity a thousand varas, a little more or less, in length, by about three hundred varas in width, and bounded by the aroyo del Chorro, the line of the Indian Pedro Maria, and the hills (los cerritos,) according to the juridical possession given to said John Wilson on the 28th day of June, A. D. 1846, and the deposition of J. M. Bonilla, taken in this case, to which juridical possession and deposition reference is had in aid of said description.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the S. Dist. of Cal.

Endorsed: Filed Feb'y 9th, 1857.

C. SIMS, *Clerk.*

Recorded in page 163.

Motion for Appeal to Supreme Court.

In the District of the United States for the Southern District of California.

Los Angeles, December Term, 1856.

JOHN WILSON, Appellant,
vs.
THE UNITED STATES, Appellees. } No. 261. (No. 50 of Transcript.)

On appeal from the United States Land Commission.

On motion of P. Ord, attorney of the United States for the southern district of California, it is hereby ordered by the court, that an appeal be granted the United States to the Supreme Court of the United States from the judgment of this court against the said United States in the above entitled cause, rendered on or about the 19th day of January, A. D. 1857.

Filed Feb'y 24, 1857.

C. SIMS, *Clerk.*

Feb'y 24, 1857.

Minutes of the Court.

Tuesday, 24th February, 1857.

On motion of P. Ord, U. S. Dist. Att'y, it is ordered that an appeal be allowed the United States in the following case, to wit, No. 261.

UNITED STATES OF AMERICA,
Southern District of California, ss.

I, C. Sims, clerk of the district court of the United States for the southern district of California, do hereby certify, that the first preceding hereunto annexed fifty-six pages, numbered from 1 to 56, both inclusive, do contain a full, true and correct copy of the

transcript from the *the* United States board of land commissioners to ascertain and settle the private land claims in California, in case No. 50 on the docket of said board, wherein Juan Wilson is the claimant for the place called "Huerta de Romualdo" or "El Chorro," as the same appears of file in my office. And I do hereby further certify, that the next and last preceding and hereunto annexed pages, numbered from 57 to 81, both inclusive, do contain a true, full and correct copy of the proceedings of the evidence of the decision and minutes of said court, had in said case, numbered 261 on the docket of said United States dist. court, as the same appear of file and of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Los Angeles, State of California, this 7th day of June, A. D. 1860, and of the independence of the United States of America the eighty-fourth.

[L. S.]

C. SIMS,
U. S. Dist. Clerk, South'n Dist. of Cal'a.

Filed 25th July, 1860.

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